

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES EAVES,)	
)	
Petitioner,)	
)	
v.)	Civ.Act.No. 06-531-KAJ
)	
THOMAS CARROLL , Warden)	
and CARL C. DANBERG , Attorney)	
General for the State of Delaware)	
)	
Respondents.)	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, James Eaves, has applied for federal habeas relief, alleging error by the state courts. D.I. 2. By the terms of the Court's order, the answer is due to be filed on November 27, 2006.

2. The drafting of the answer in this case was assigned to an assistant attorney general, working under the supervision of the undersigned. In the last month, that individual has prepared numerous answering briefs in state court. He has also been preparing several answers to petitions for writs of habeas corpus in this Court (*Harrison v. Ryan*, Civ. Act. 06-434-GMS; *Eaves v. Carroll*, Civ. Act. 06-531-KAJ; *Barnett v. Carroll*, Civ. Act. 06-583-JJF). The assistant attorney general was also required, as part of the Bar admission process, to attend a mandatory pre-admission conference, held at Widener University School of Law on November 2 and 3, 2006. The assistant attorney

general working on the case believed he could prepare the draft of the answer in sufficient time. However, work on his other assigned, especially the federal habeas litigation, required more time than anticipated. Additionally, counsel for the State continues to work on other cases pending in this Court and the state supreme court. Consequently, counsel has been unable to complete the answering brief in this case. Counsel anticipates that he will be able to complete the answer by Monday, December 11.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' second request for an extension of time in this case.

5. Respondents submit that an extension of time to and including December 11, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ James T. Wakley
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4612

DATE: November 27, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ James T. Wakley
Deputy Attorney General

Counsel for Respondents

Date: November 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2006, I electronically filed the attached documents with the Clerk of Court using CM/ECF. I also hereby certify that on November 28, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

James Eaves
SBI No. 00306218
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ James T. Wakley
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 4612
james.wakley@state.de.us

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 General for the State of Delaware)
)
 Respondents.)

ORDER

This _____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made
and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before December 11, 2006.

United States District Judge